

David K. Byers
Administrative Director
Administrative Office of the Courts
1501 W. Washington, Suite 411
Phoenix, AZ 85007
(602) 452-3301
Projects2@courts.az.gov

IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of)	
)	
PETITION TO AMEND RULES)	
24.3 and 26.12 OF THE ARIZONA)	Supreme Court No. R-18-0026
RULES OF CRIMINAL)	
PROCEDURE; AND RULE 24.1)	REPLY
RULES OF COURT PROCEDURE)	
FOR CIVIL TRAFFIC AND CIVIL)	
BOATING VIOLATIONS)	
_____)	

Pursuant to Rule 28 of the Arizona Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, and Chair of the Supreme Court Task Force on Fair Justice for All: Court-Ordered Fines, Penalties, Fees, and Pretrial Release Policies (“the Task Force”) respectfully submits this Reply.

No Comments were formally filed with the Court, however, Petitioner received informal comments from several judges, which prompted further review of House Bills 2313 and 2169. As a result, Petitioner has identified the need for further modifications to each of the proposed rules as set forth in Appendix A.

Wherefore, petitioner respectfully requests that the Court amend the Rules of Criminal Procedure and the Rules of Court Procedure for Civil Traffic and Civil Boating Violations as proposed in Appendix A.

RESPECTFULLY SUBMITTED this 2nd day of November 2018.

By /S/
David K. Byers, Administrative Director
Administrative Office of the Courts
1501 W. Washington Street, Suite 411
Phoenix, AZ 85007
(602) 452- 3301
Projects2@courts.az

APPENDIX A

(language to be removed from current rules is shown in ~~striketrough~~, new language is underlined)

Arizona Rules of Criminal Procedure

Rule 24.3. Modification of Sentence

(a) Generally. No later than 60 days of the entry of judgment and sentence or, if a notice of appeal has already been filed under Rule 31, no later than 15 days after the appellate clerk distributes a notice under Rule 31.9(e) that the record on appeal has been filed, the court may correct any unlawful sentence or one imposed in an unlawful manner.

(b) Mitigation. Unless otherwise provided by law, the court may mitigate a monetary obligation imposed at sentencing. The provisions of Rule 39 apply to any criminal proceeding concerning mitigation of a monetary obligation.

(c) Appeal. [no changes]

Rule 26.12. Defendant's Compliance with Monetary and Non-Monetary Terms of a Sentence

(a) and (b) [no changes]

(c) Failure to Pay a Monetary Obligation or to Comply with Court Orders.

(1) *Defendants Not on Supervised Probation.* If a defendant who is not on supervised probation fails to pay a fine, restitution, or other monetary obligation, or fails to comply with any other term or condition of sentence within the prescribed time, the court must promptly notify the State.

(2) *Defendants on Supervised Probation.* If a defendant who is on supervised probation fails to pay a fine, restitution, or other monetary obligation, or fails to comply with any other term or condition of probation within the prescribed time, the court must promptly notify the defendant's probation officer.

(3) *Court Action upon Failure of a Defendant to Pay a Fine, Restitution, or Other Monetary Obligation or to Comply with Court Orders.* If the defendant fails to timely pay a fine, restitution, or other monetary obligation, or otherwise fails to comply with a court order,

and fails to respond to a court notice informing the defendant of the consequences and resolution options, the court may issue an arrest warrant or a summons and require the defendant to show cause why he or she should not be held in contempt. The court must issue a summons unless there is reason to believe a warrant is required to secure the defendant's appearance. A prosecutor who requests a warrant, or a judge who orders a warrant, must state the reasons for the issuance of a warrant rather than a summons.

(4) *Authority to Modify Monetary Obligation.* If the court finds the defendant's default is not willful and the defendant is unable to pay all or part of the monetary obligation, unless otherwise provided by law, the court may mitigate the monetary obligation. In determining whether the defendant is unable to pay all or part of a financial sanction, the court may consider any relevant evidence including the factors listed in A.R.S. § 13-825.

(5) *Exclusion of Certain Income.* Under federal and state law, in determining whether to find the defendant in contempt, the court must exclude income derived from the following sources:

(A) The Temporary Assistance for Needy Families Program established by § 403 of Title IV of the Social Security Act (A.R.S. 46-208);

(B) The Supplemental Security Income Program (42 U.S.C. §§ 1381 through 1383f);

(C) The Social Security Disability Insurance Program (42 U.S.C. §§ 401-433); and

(D) Veterans Disability Compensation.

~~(4)~~(6) *Incarceration for Contempt.* If the court finds the defendant in contempt for failure to pay a monetary obligation or failure to comply with a court order, before ordering the defendant incarcerated for contempt, the court must determine that no reasonable measures other than incarceration are adequate to meet the State's interests and permit the defendant a reasonable period of time to pay the obligation in full or make other payment arrangements.

Rules of Court Procedure for Civil Traffic and Civil Boating Violations

Rule 24.1. Mitigation

The court may mitigate a monetary obligation imposed pursuant to Title 28, Chapters 3, 5, 7, and 9.